

LEGAL FRAMEWORK AND PRACTICE OF FAMILY REUNIFICATION IN HUNGARY

CONTENT: 1. Introductory Remarks. – 2. The Legal Frame. – 3. The Validity of the Residence Permit for Family Reunification. – 4. The Application Procedure. – 5. Some Problematic Issues. – 6. Examples for Juridical Practice. – 7. Conclusion.

1. *Introductory Remarks*

In recent years, migration events and the subsequent international migration crisis developed fundamental changes in the migration policy of the EU States. The regulatory environment regarding migration and integration in these countries with the social, political and economic environment as formative background has faced never before seen challenges. According to UNHCR data, during the summer of 2015 nearly half a million people crossed through the Hungarian territory. In 2015 Hungary received the second highest number of asylum seekers in the EU, registering 15% of total first asylum applications. The number of asylum seekers increased dramatically, Kosovars were the largest group in 2014, but in 2015 the main groups came from Syria and Afghanistan.¹ However, thanks to the drastic changes in the regulatory environment regarding migration policy, the number of asylum seekers has fallen.

Changes in the number of the asylum seekers arriving in Hungary (Q1 2016 - Q1 2017)

	Q1 2016	Q1 2017	Change	Change in %
Total number of registered asylum seekers	7,182	1,290	-5,892	-82.04%
European	150	25	-125	-83.33%
Non-European	7,032	1,265	-5,767	-82.01%
Total number of European asylum seekers in the percentage of all asylum seekers	2.09%	1.94%		
Total number of not European asylum seekers in the percentage of all asylum seekers	97.91%	98.06%		

Source: Source: Immigration and Asylum Office, Statistics, Q1 2016-Q2 2017, <http://www.bmbah.hu>

¹ OECD (2016), International Migration Outlook 2016, OECD Publishing, Paris. http://dx.doi.org/10.1787/migr_outlook-2016-en, p. 264.

Parallel to this, the number of applicants who request residence permit due to Act II of 2007 because of the purpose of family reunification was 1,196 in the first quarter of 2017 which is 8.28% less than that of the same period in 2016.

Number of applicants who request residence permit due to the Act II. of 2007, according to the main purposes of stay (Q1 2016 - Q1 2017)

Purpose of stay	Q1 2016	In % of all applications	Q1 2017	In % of all applications	Changes	Changes in %
Gainful activity	3,085	41.15%	4,356	47.38	1,271	41.20
Studies	1,603	21.38%	2,085	22.68	482	30.07
Family reunification	1,304	17.39%	1,196	13.01	-108	-8.28
Other purposes	1,072	14.30%	987	10.74	-85	-7.93
Official	325	4.34%	415	4.51	90	27.69
Other purposes of stay	108	1.44%	155	1.69	47	43.52
Total:	7,497	100.00	9,194	100.00	1,697	22.64

Source: Immigration and Asylum Office, Statistics, January-April 2016/January-April 2017, <http://www.bmbah.hu>

Interestingly, when analysing the citizenship data of asylum seekers from 2017, the number of Syrian citizens fall significantly, and Afghan asylum seekers form the biggest part.

Changes in the number of asylum applications I. according to the major citizenships
Q1 2017

Citizenship	Q1 2017	In % of all the cases
Afghane	536	41.55%
Iraqi	258	20.00%
Syrian	201	15.58%
Pakistani	104	8.06%
Algerian	54	4.19%
Iranian	25	1.94%
Moroccan	18	1.40%
Nigerian	11	0.85%
Turkish	10	0.78%
Palestine	7	0.54%
other	66	5.12%
Total	1290	100.00%

Source: Source: Immigration and Asylum Office, Statistics, January-April 2016/January-April 2017, <http://www.bmbah.hu>

2. The Legal Frame

First of all, we shall differentiate regarding the personal scope. On one hand there is the family reunification of third-country national family members of a Hungarian citizen or an EEA national, covered by Act I of 2007 on the Admission and Residence of Persons with the Right of Free Movement and Residence. This is in line with Directive 2004/58/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the EU Member States.

On the other hand, there is the family reunification of third-country national family members of third-country nationals legally residing in the territory of Hungary, regulated by Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals, and Implementing Government Decree No. 114/2007. (V. 24.) that implements the Family Reunification Directive, namely Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. Beside Act II of 2007, Act LXXX of 2007 on Asylum constitutes further directions for family reunification.² Our subjects of analysis are third-country nationals who are non-Hungarian citizens and stateless persons except for persons having the right of free movement and residence (EEA nationals and family members accompanying or joining an EEA national or a Hungarian citizen).

When looking to the integration of migrants, Hungary's Migrant Integration Index shows one of the best scores related to the legislation of family reunification, which is, among others, due to Government Decree No. 114/2007 reducing the necessary processing time for third-country nationals. But this advantage is overshadowed by the fact that immigration procedures, including family reunification, are highly bureaucratic and the translation and procedural costs for obtaining documentation is expensive where the cost must be met by the applicant.³

According to Art. 19 (2) of Act II 2007, residence permit may be issued on the ground of family reunification to a third-country national who is a relative of a third-country national (referred to as "sponsor" in the Act) with a residence permit, immigration permit, permanent residence permit, interim permanent residence permit, a national or EC permanent residence permit, or - under specific other legislation - in possession of a residence card or permanent residence card.

The Act states that residence permit may be granted on the ground of family reunification to family members of persons with refugee status, and the parents of

² According to the regulation, the following definition are to be taken into consideration:

Stateless person: a person who is not considered as a national by any State under the operation of its law.

Refugee: a non-Hungarian citizen who, in his/her native country or the country of his/her habitual residence, is subject to persecution on the basis of race or nationality, his/her alliance with a specific social group, religious or political conviction, or whose fear of being subject to persecution is well founded.

Person admitted for subsidiary protection: a foreign national who does not qualify as a refugee but in respect of whom there is reason to believe that the person concerned, if returned to his or her country of origin would face a real risk of suffering serious harm, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.

³ BODOLAI, *Legal and functional context of family reunification in Hungary*, Migration to the Centre, 02.05.2013, 3., migrationonline.cz.

unaccompanied minors with refugee status, or their legally appointed guardian.⁴ Pursuant to Art. 17 (1) of Act LXXX of 2007 unless a rule of law or government decree expressly provides otherwise, a beneficiary of subsidiary protection has the rights and obligations of a refugee, in this way family members of the beneficiary of subsidiary protection, and the parents of unaccompanied minors who is beneficiary of subsidiary protection, or their legally appointed guardian may be granted a residence permit on the grounds of family reunification.⁵

Section 2 (d) of Act II of 2007 determines who can be taken into consideration as a family member. These are following: the spouse, the minor child (including adopted children) of a his/her and his/her spouse; the minor child, including adopted and foster children where the third-country national has parental custody and the children are dependent on him/her; the minor child, including adopted and foster children of the spouse where the spouse has parental custody⁶ and the children are dependent on him/her.

According to the provisions of Act II of 2007 the following relatives of sponsors, the spouses of sponsors or persons with refugee status may be granted a long-term visa or a residence permit on the grounds of family reunification: their parents who are dependants and their brothers and sisters, but only if they are unable to provide for themselves due to health reason.

The spouse of a person with refugee status may be issued a residence permit for the purpose of family reunification but only if the marriage was contracted before the entry of the refugee into the country. However, the spouse of a sponsor cannot receive a residence permit if the other spouse of the sponsor has a residence permit that was issued on the grounds of family reunification. But family members who have not obtained the right of residence on any other grounds, are entitled to further residence after five years from the date of issue of the first permit or upon the death of the sponsor or the persons with refugee status, only if other requirements for further residence are ensured.⁷ The children of third-country nationals with a national visa or a residence permit born in the territory of Hungary are issued a residence permit on the grounds of family reunification.

To apply for family reunification, family links have to be verified with official documents. It is important to highlight, that a marriage should be contracted before the entry of the refugee. Birth certificate, marriage certificate; adoption document and any other document related to family relationship can mean documents officially proving the marriage. Moreover, foreign authentic instrument, any private document certified by a foreign court, administrative body, notary public or any other person vested with authority to issue authentic documents will be considered affirmative proof if

⁴ Art. 19 of Act II of 2007.

⁵ Regarding to Art. 12 (1) of Act LXXX of 2007 a subsidiary protection is granted to a foreigner who does not satisfy the criteria of recognition as a refugee but there is a risk that, in the event of his/her return to his/her country of origin, s/he would be exposed to serious harm and s/he is unable or, owing to fear of such risk, unwilling to avail himself/herself of the protection of his or her country of origin. According to Art. (2) fear of serious harm or of the risk of harm may also be based on events which occurred following the foreigner's departure from his/her country of origin or on the activities of the foreigner which s/he was engaging in following departure from his/her country of origin.

⁶ "Parental custody" includes the rights and obligations of care, upbringing, property management and legal representation of the minor furthermore the right of appointing a guardian and exclusion from guardianship.

⁷ Art. 19 (7) of Act II of 2007

recognized by the Hungarian diplomatic or consular mission of that country where it was issued.⁸ A document in foreign language is accepted only with a certified Hungarian translation attached, unless otherwise prescribed by any legislation pertaining to the type of case in question.

Here, we can see an alleviation regarding refugees: a decision rejecting an application for family reunification with a refugee cannot be based solely on the fact on lacking documentary evidence of the family relationship.⁹ In this case family relationship with a person with refugee status or with a person who is a beneficiary of subsidiary protection can be verified by any reliable means such as a DNA test. A sample is taken in the presence of an officer of the regional directorate, or the competent consulate officer. The analysis can be performed abroad but is recognized only with an assessment of the Hungarian Institute for Forensic Sciences. A major disadvantage is that the cost of this analysis is to be met by the applicant.¹⁰

The sponsor has to collect a wide list of documents which form the background of an application. These are a valid travel document¹¹ for the return to their country of origin or transit to a third-country, and an accommodation or a place of residence¹². Sufficient financial background is needed and asked as well, to cover the accommodation costs of the family member. Staying in a flat for rent or for free must be based on a contract and on agreement¹³ as an evidence for legally staying there.

In Hungary, there is an obligation for everybody to have healthcare insurance, either private or public. Thus there are two possibilities: the family member has the insurance or sufficient financial resources are necessary for the healthcare services.¹⁴

⁸ Unless any regulation pertaining to the case in question, an international agreement or the principle of reciprocity suggests otherwise.

⁹ Art. 19 Act II of 2007.

¹⁰ Art. 56 (1) of Act II of 2007.

¹¹ This means:

- a valid passport or the permits necessary for the third-country national for returning to his/her country of origin, or to the country he/she indicates; and
- a valid ticket for departure, or sufficient funds to purchase such a ticket, or a means of transport lawfully used by the third-country national.
- statement undertaking the commitment of voluntary departure from the territory of the Member States of the European Union if the application is refused.

¹² It is a property shown in the real estate register like residential building, detached house, any similar property suitable for habitation (even commercial and other accommodation).

¹³ - A residential lease contract in proof of the rental of a residence;

- a document on accommodation by courtesy;
- a document in proof of ownership of a home, in the form of abstract of title issued within 30 days to date;
- a valid letter of invitation with an official certificate affixed; documentary evidence to verify the reservation of accommodation and payment;
- a notarised statement made by a family member with the right of residence in Hungary as holding a long-term visa or residence permit, with immigrant or permanent resident status, holding a residence card or a permanent residence card in accordance with specific other legislation, or with refugee status, promising a place of abode to the applicant; or
- a real estate sales contract and a copy of the decision of the competent Budapest or county government agency granting permission for the acquisition of a real estate property;
- other documents.

¹⁴ The income or assets have to be sufficient to cover their living expenses, including accommodation, return travel, and if necessary, healthcare. This can be verified by following:

- a notarised statement made by the receiving family member promising support to the applicant along with a document in proof of the family member's ability to provide such support;

Also, they cannot be the subject of family reunification, if they are subject to expulsion or exclusion, they are considered to be a threat to public policy, public security or public health, or to the national security of Hungary and they are persons for whom an alert has been issued in the SIS for the purposes of refusing entry.

There are exceptions, when a family member does not belong to the above specified personal circle. For example when such a family member is in a particularly vulnerable situation but not because of health reasons. In this case, the relocation from other members of the family who are recognized as refugees in Hungary seriously endangers the person. Nevertheless, this should be supported by medical and psychiatric expert advice.¹⁵

Yet, there is alleviation for refugees: If family members apply for the visa within 3 months of the date of gaining the refugee status, they do not have to meet the criteria to have enough money to cover costs of living, a big enough flat¹⁶ and full health insurance¹⁷. However, family members of beneficiaries of subsidiary protection cannot rely on this preference.¹⁸

3. The Validity of the Residence Permit for Family Reunification

There are three different validity periods for the family reunification's residence permit. First, it can hold up to four years, and it may be extended by up to four additional years at a time, if the sponsor has an EU Blue Card.¹⁹ Second, the validity can hold five years maximum, and it may be extended by up to five additional years at a time, if the sponsor has an EC permanent residence permit on account of holding an EU Blue Card. Finally, the permit's validity holds up to three years maximum – except as provided above –, and it is possible to extend it by up to three additional years at a time.²⁰

It is very important to mention, that the validity period is dependent on the validity period of the sponsor's residence permit, that is to say, it cannot exceed it. In the case of the EU Blue Card, the validity period of a residence permit issued for the purpose of family reunification shall be the same as the validity period of the sponsor's EU Blue Card.

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- an income certificate issued by the tax authority for the family member's or applicant's previous year's income;
 - an income certificate issued by the employer;
 - the family member's or applicant's bank statement of a Hungarian bank account;
 - a certificate issued by the employer and/or tax authority as proof of regular income received from abroad;
 - other documents.

¹⁵ MAGYAR HELSINKI BIZOTTSÁG, *Nemzetközi védelemben részesített személyek családegyesítése*. Gyakorlati útmutató. 2008. május, p. 3. http://helsinki.hu/wp-content/uploads/Csaladegyesitesi_utmutato.pdf

¹⁶ 6 square meters/family member.

¹⁷ MENEDÉK, MIGRÁNSOKAT SEGÍTŐ EGYESÜLET – MAGYAR HELSINKI BIZOTTSÁG, *Family Reunification Handbook for People with International Protection*, Budapest, 2014.

¹⁸ Sec. 56 (6) (7) Government Decree no. 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Entry and Stay of Third-Country Nationals.

¹⁹ EU Blue Card' shall mean a residence permit entitling its highly qualified holder to reside and work in highly qualified employment in the territory of a Member State under the terms set out in Act II of 2007.

²⁰ Art. 19 (9) of Act II of 2007.

The validity period of the residence permit shall be set in consideration of the date of expiry of the passport. The validity period of a residence permit issued for the purpose of family reunification cannot exceed the validity period of the applicant's travel document even if the time limits provided for above are taken into consideration.²¹

The regulation puts emphasis on children, because the children of third-country nationals with a national visa or a residence permit born in Hungary are to be issued a residence permit on the grounds of family reunification.²²

The family member receiving permit for family reunification has to notify the regional directorate about his/her divorce or the death of the spouse by submitting the official documents within 60 days of receiving the relevant official documents.²³

4. The Application Procedure

The application procedure has several stages. To start it, several requirements shall be met such as a completed form, prescribed enclosures and the payment of the procedural fee.

A very strict stipulation is that the family member is obliged to submit the application in person. An alleviation is offered, however, when the family member is unable to appear due to health reason. There is no possibility to submit it by mail, not even in particularly appreciated cases such as when the family member is an endangered unaccompanied minor, or an illiterate applicant, or has no Hungarian language knowledge necessary to understand the documents.²⁴

Family members have to apply to a Hungarian diplomatic or consular mission or to any other place²⁵ authorised to accept applications. According to the law, applications for family reunification shall be submitted in the country where the applicant's permanently or temporarily resides, respectively in the country of his/her nationality. Nevertheless, there is a possibility to submit to a consular officer or to any other place authorised to accept applications in another country where the applicant lawfully resides but with several conditions: First, there is no consular officer working or there is no other place authorized where the applicant permanently or temporarily resides, respectively in the country of his/her nationality, the applicant asked to submit documents explaining the reason of applying to another country different to that of where the applicant permanently or temporarily resides, respectively in the country of his/her nationality. Second, Hungary has a significant economic, scientific, cultural or sporting interest in

²¹ *Ibid.* 19 (10) (11).

²² *Ibid.* 19 (7) (8).

²³ Sec. 105 (2) Government Decree no. 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Entry and Stay of Third-Country Nationals.

²⁴ MAGYAR HELSINKI BIZOTTSÁG, Nemzetközi védelemben részesített személyek családegyesítése. Gyakorlati útmutató, 2008. május, p. 4. http://helsinki.hu/wpcontent/uploads/Csaladegyesitesi_utmutato.pdf.

²⁵ Honorary consulate or a commercial representation or an external service provider authorized to receive the application.

his/her entry and stay.²⁶ The list of Hungarian missions is available on the Government of Hungary's website.²⁷

An obligatory part of the application procedure is that the family member is undergoing facial likeness and fingerprint taking procedures because the residence permit is issued with biometric data. Fingerprint is taken from family members older than six years.

There is an administrative service fee for the procedure²⁸, payable at that diplomatic or consular mission primarily in EUR or other convertible currency, or in exceptional cases in the legal tender of the State where the application is submitted. The administrative service fee charged for the procedure is HUF 18,000 if submitted in Hungary. The fee charged for the extension of a residence permit is HUF 10,000, payable by the applicant in the form of revenue stamp.

The Immigration and Asylum Office will be handed the applications and takes the decision on them. According to the Hungarian law, there is no time limit for family reunification. In Hungary, only refugees are entitled to family reunification under favourable conditions: within three months following the recognition of their status.²⁹

The regional directorate rules on the application for residence permit for the purpose of family reunification within 21 days. The applicant may request the immigration authority to send his/her residence permit by post, or he/she can collect the document personally.

During the process, the immigration authority may request further documents, apart from the mandatory enclosures, for ascertaining the relevant facts of the case. The administrative time limit shall not include the length of time between the receipts of the notice for remedying deficiencies until the time of compliance.

If the decision is positive, an entry visa will be issued by the competent consulate officer based on the regional directorate's decision. The so-called D visas are single-entry visas authorising a stay of not more than 30 days. Because of the time limit, it is advised to visit when entering the regional directorate of the Immigration and Asylum Office responsible for the place where their future accommodation is located to receive the residence permit and register this accommodation in Hungary.

When granted a residence permit and a visa, family members of the sponsor have 30 days from entering Hungary to either take the residence permit or apply for asylum. In the asylum procedure, family members of recognised refugees are automatically granted the same status as the sponsor.³⁰ However, according to the definition of family members, only the sponsor's children, spouse and parents are considered family members.³¹ Adult children and siblings are not automatically granted refugee status. Family members of beneficiaries of subsidiary protection are not automatically granted subsidiary protection, they have to apply for asylum and prove their cases. During the asylum procedure, family members of the sponsor have the same rights as asylum seekers. In case they take their residence permit, they will not have the same rights and entitlements of the sponsor.

²⁶ Sec. 47 (1)-(3) Decree no. 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Entry and Stay of Third-Country Nationals.

²⁷ See <http://www.kormany.hu/hu/kulgazdasagi-es-kulugyminiszterium/kulkepviseletek>.

²⁸ EUR 60.

²⁹ Sec. 29 Decree 113/2016. (V.30).

³⁰ Art. 7(2) of the Asylum Act.

³¹ Art. 2(j) of the Asylum Act.

Recently family reunification became more difficult since the authorities are even stricter regarding the documents. Now they request that all the documents bear an official stamp from the authorities, proving that they are originals, as well as an official stamp from the Hungarian consulate. All documents have to be translated into English or Hungarian, which is very costly. Hungary does not accept certain travel documents, such as those issued by Somalia for example. Nevertheless, unlike other EU Member States, Hungary refuses to apply any alternative measure³² that would enable for a one-way travel with the purpose of family reunification in such cases.

Consequently, certain refugee families are *de facto* excluded from any possibility of family reunification based on their nationality or origin.

There is a so-called single application procedure, too. In case the foreign national plans to seek employment in Hungary, the application for the issue or extension can be submitted by the prospective employer, too. In this option, the client has to give a written consent.³³ But even in this case, the applicant, the family member, is obliged to appear in person when requested. At the same time, the family member can apply for an entry visa for receiving a residence permit before admission to the country in the same application for residence permit. Third-country nationals, including stateless people possessing the single permit and residing lawfully within Hungary, now have access to non-contributory old age allowance, disability allowance and all family benefits, provided that they have been authorised to work in the country for a period exceeding six months.³⁴

The family members of third-country nationals with refugee status shall verify their compliance with the requirements such as having a place of accommodation, etc. if more than three months have lapsed between the time when refugee status was granted and the time when the request for family reunification was lodged.

Subject to several conditions, there is the possibility of submitting the application for an extension of the stay in Hungary for third-country nationals at the regional directorate responsible for the place where the accommodation of the third-country national is located 30 days before it expires, with the necessary documents attached, such as his/her valid travel document. There are special circumstances to justify the submission,³⁵ or if the purpose of stay exceeding ninety days within a one hundred and eighty day period is research, or if lawfully residing in Hungary as a national of the States listed in Annex II of Council Regulation 539/2001/EC, or together with such a third-country national in the capacity of a family member.

In the so-called summary proceeding, applications submitted after 1 January 2016 has an administrative time limit for less than two months (or 60 days) that is to say the

³² Alternative measures applied by other Member States include the issuance of a specific temporary laissez-passer for foreigners, the acceptance of specific travel documents issued by the Red Cross for the purpose of family reunification and the use of the so-called EU Uniform Format Form, based on Council Regulation (EC) No 333/2002 of 18 February 2002. See: AIDA, *Country Report: Hungary*, 31.Dec. 2016, 91.

³³ In that case the immigration authority may communicate with the employer as well, however, the client will be notified of all procedural steps taken.

³⁴ OECD (2016), *International Migration Outlook 2016*, OECD Publishing, Paris.

http://dx.doi.org/10.1787/migr_outlook-2016-en, p. 264.

³⁵ Such as events related to medical treatment, family reunification or occupational activity that has occurred for reasons beyond the third-country national's control, and that prevents to have the application submitted under general provisions.

application shall be processed max. in two months.³⁶ If all information and necessary conditions are available, the authority makes the decision without delay, at the latest within 8 days. If the conditions for summary proceeding are not satisfied, the proceeding will be carried out within the normal time limit where the authority shall bring a conditional decision within 8 days from the date of receipt.³⁷ If it fails to bring a decision within 60 days after the application is received, it shall refund the procedural fee to the client and shall grant exemption from the payment of any other fees. The immigration authority shall not bring a conditional decision if a decision on the merits is adopted within 8 days from the date of the opening of the proceeding, or if the proceeding is suspended or dismissed, or if the application is refused without any examination as to merits. The provisions on summary proceedings shall not apply, and no conditional decision is to be made if a specialist authority is involved, or if the immigration authority requests the opinion of an authority provided for by specific other legislation for the protection of public security or national security.

In case of refusal, the period to appeal against the decision is 8 days from delivery. The appeal has to be submitted to the authority of the first instance, or to the Hungarian diplomatic or consular mission where the application was submitted. New evidence of which he/she was aware before the decision was adopted cannot be taken into consideration. Also, if the appeal is lodged without showing cause, the authority of the first instance dismisses the appeal without any examination as to merits.³⁸

5. Some Problematic Issues

It is important to highlight that marriages should be accomplished before the entry of the spouse of a person recognized as a refugee. If married in the meantime they cannot join each other. Pursuant to Act XXIX of 2009 Art. 3 (1) on registered partnership, provisions applicable to spouses apply for registered partnerships as well unless otherwise specified by law and according to commentary on the above act, the registered common law wife/husband may obtain a residence permit for the purpose of

³⁶ According to the Hungarian Act on General Rules of Administration implemented on 1 January 2016, an administrative authority -- including the Hungarian Competition Authority -- must issue a decision immediately, but at latest within 8 calendar days if:

- the facts of the case are fully clarified,
- there is no opposing party involved, and
- the generally governing legal framework provides a deadline under two months or sixty days.

³⁷ According to Sec. 71/A of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services:

(1) In proceedings opened upon request, the authority shall - in accordance with this Section - bring a conditional decision within eight days from the time of receipt of the request.

(2) In said conditional decision the authority shall provide:

- a) that the authority is liable to pay to the client making the request a sum equal to the duty or fee payable for the proceedings, or ten thousand forints in the absence thereof;
- b) that the client making the request is exempt from the payment of procedural costs;
- c) that the client is entitled to exercise the right asserted.

³⁸ The administrative service fee for the appeal is HUF 5,500 (in the form of revenue stamp), if submitted at a Hungarian diplomatic or consular mission, is EUR 20.

family reunification³⁹, however the positive outcome is not granted.⁴⁰

“Marriage of convenience” is not defined under Hungarian legislation. Family members other than spouses or children who obtain the right to reside in the EU, may also misuse this right by using it primarily as a means to enter and stay in or repeatedly re-enter the EU, rather than in order to maintain the family unit. There is a significant issue in relation to the presentation of false and forged documents which substantiate genuine family links and where documentation from the country of origin may not be available or capable of validation.⁴¹

Beside that, Hungary is not only affected by cases in which gaining Hungarian residence right is the aim, but with the help of Hungarian citizens concluding marriages of convenience with third-country nationals, a right of residence is applied for in other EU Member States..In 2013, hundreds of cases have been revealed in which Serbian citizen men and Hungarian citizen women concluded marriages in Serbia and then both the men and women were transported mainly to German cities to apply for a residence card for the husbands with the assistance of the Hungarian wives.⁴²

False declaration of parenthood is another issue. Hungary provides no information on the scale of the issue, but argues that false declarations of parenthood have most often taken place between adults of Asian origin (primarily Vietnamese and Chinese nationals) staying irregularly in Hungary who claim to be the parent of a Hungarian child aged 6-8 years in order to establish a legal status as a family member.⁴³ The competent authorities to detect potential abuses are the immigration authority, law enforcement authority and civil national security authority regulated by special legislation.

In the case of marriage, some of the registrars refer the problem to the OIN and initiate an expert investigation with respect to the third-country national’s passport in case a foreigner illegally staying in the territory of Hungary wishes to enter into marriage.

Although family reunification is possible on the basis of the Hungarian legal background, people from ineffective, or failed states are virtually excluded from exercising this right e.g. Somalia where internationally accepted documents are missing. Though a valid travel document is usually a basic condition for family reunification, in the absence of this, many countries have come up with different solutions (e.g. a

³⁹ EUROPEAN MIGRATION NETWORK-EUROPEAN MIGRATION NETWORK HUNGARY, *Misuse of the Right to Family Reunification. Marriages of convenience and false declarations of parenthood produced*, Luxembourg: Publications Office of the European Union, June 2012, 12. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/family-reunification/hu_20120606_familyreunification_en_version_final_en.pdf.

⁴⁰ SOMOGYVÁRI, *A menekültek és oltalmazottak családtagjainak beilleszkedési kérdései*, in *Fundamentum*, 2013/2.

⁴¹ EUROPEAN MIGRATION NETWORK, *Misuse of the Right to Family Reunification. Marriages of convenience and false declarations of parenthood produced*, Luxembourg: Publications Office of the European Union, June 2012, p.21. http://www.iom.lt/images/publikacijos/failai/1428649414_es%20EMN_Misuse_Family_Reunification_Study_PUBLICATION_BF.pdf

⁴² TÖTTÖS, *The Fight against Marriages of Convenience in the EU and in Hungary*, in *Pécs Jour. Int.Eur. Law*, 2015/II, p. 58.

⁴³ EUROPEAN MIGRATION NETWORK, *Misuse of the Right to Family Reunification. Marriages of convenience and false declarations of parenthood produced*, Luxembourg: Publications Office of the European Union, June 2012, p.21. http://www.iom.lt/images/publikacijos/failai/1428649414_es%20EMN_Misuse_Family_Reunification_Study_PUBLICATION_BF.pdf

uniform format form, issuing a one-time entry document or adopting a travel document issued by the Red Cross), which solutions also apply to Hungary.⁴⁴

6. Examples for Judicial Practice

Previously, according to the IAO practice, beneficiaries for subsidiary protection were not eligible for family reunification: according to the IAO, a residence permit cannot be granted on the ground of family reunification for the beneficiary of subsidiary protection and their family members, in case the foreign family member is working or studying here for more than 3 months.⁴⁵ In a lawsuit against the Office, the Supreme Court ruled that they have the same right to family reunification in Hungary as refugees and instructed the Office to make a favorable decision to the family.⁴⁶ The case was about a Palestinian man who received the beneficiary for subsidiary protection status in Hungary, and wished to bring his wife and the two young children (living in the Ukraine) to Hungary. However, the Office refused to grant the residence permit for family reunification to the family members for more than two years.

However, while refugees are exempted from fulfilling the requirements regarding accommodation, health insurance and resources if they submit the application within three months after granting refugee status, Hungary does not support exempting beneficiaries of subsidiary protection from these requirements.

In relation to permits requested by third-country nationals, instances of declaration of false parenthood or verification of relations by false documents sometimes emerge. The facts in these cases are difficult to verify, since the law does not allow for the investigation of whether the persons concerned, for example, de facto take care of the minor and support him/her financially or emotionally. The Supreme Court of Hungary defined its position on the issue in two verdicts in October 2011 as follows: In these procedures only the existence of right of parental custody of the thirdcountry national over the minor Hungarian citizen may be examined, it is irrelevant whether the minor is in fact living in the household of the foreigner. Regarding applications for residence permits submitted by the third-country nationals' family member of third-country nationality, the aspects of relations of convenience did not arise, however, sometimes they attempt to verify their family relations by false documents.⁴⁷

⁴⁴ *Szomáliai menekültek családgyesítése – példaértékű gyakorlatok az Európai Unióban.* <http://helsinki.hu/wp-content/uploads/HHC-Famreun-of-Somalis-2009-HUN-FINAL.pdf>

⁴⁵ The authority argued that Sec. 19 of Act II of 2007 listed expansively the entitled persons applying for a residence permit on the ground of family reunification but these were not among.

⁴⁶ Supreme Court Decision No. Kfv. III. 37.925/2009/7. in IDEGENRENDÉSZETI JOGGYAKORLAT-ELEMZŐ CSOPORT: ÖSSZEFOGLALÓ VÉLEMÉNY. A Kúria Idegenrendészeti joggyakorlat-elemző csoportja által 2013. május 30-án elfogadott és a Kúria Közigazgatási és Munkaügyi Kollégiuma által 2013. szeptember 23-án jóváhagyott összefoglaló vélemény [Bsz. 29-30. §]

⁴⁷ Decision of Supreme Court No. Kfv.III.37.048/2011/5. and Decision of Supreme Court No. Kfv.III.37.030/2011/4. in IDEGENRENDÉSZETI JOGGYAKORLAT-ELEMZŐ CSOPORT: ÖSSZEFOGLALÓ VÉLEMÉNY. A Kúria Idegenrendészeti joggyakorlat-elemző csoportja által 2013. május 30-án elfogadott és a Kúria Közigazgatási és Munkaügyi Kollégiuma által 2013. szeptember 23-án jóváhagyott összefoglaló vélemény [Bsz. 29-30. §]

As there were cases of partnership of convenience, we shall point out that the national provisions only extend the right to free movement for partners if they are registered according to the Act that provides the effect of the partnership generally be equivalent with marriage, and this is a possibility only provided in case of same sex couples. In connection with this there was a request for a preliminary ruling from the Metropolitan Public Administration and Employment Court in the case of *Fadil Cocaj vs. Office of Immigration and Nationality* (its present name is Immigration and Asylum Office) asking for clarification regarding the nature and the form of national registration that leads to acknowledging a partner to be a family member under the Free Movement Directive.⁴⁸

7. Conclusion

Family reunification may depend on countless circumstances, and there are some that make it difficult or impossible to succeed. The intent of eradicating and addressing these difficulties is strongly linked to the country's current leadership in relation to democratic fundamental values.⁴⁹ In a research, conducted among Hungarians in 2015 on their willingness to take in refugees on the base of the refugees' nationality arriving beyond Europe, Syrians had the highest percentage. Most Hungarians expressed sympathy for people fleeing war, natural disaster, starvation and arriving on the ground for family reunification. However, in a later research made in January 2016, only every third respondent replied that they should be accepted, contrary to the research from 2015, where every second agreed with that. Hungarians had less sympathy with those fleeing ethnically, politically and religiously based persecution.⁵⁰

⁴⁸ ECJ 12.1.2015, C-459/14, *Fadil Cocaj v Bevándorlási és Állampolgársági Hivatal*.

⁴⁹ HORVÁTH, *Családegyesítés – szigorúbban, még szigorúbban?* 2015. november 7. <https://www.migraciokutato.hu/hu/2015/11/07/csaladegyesites-szigorubban-meg-szigorubban/>.

⁵⁰ SIMONOVITS, *A migrációs válságra adott társadalmi reakciók Magyarországon elutasítás és szolidaritás* 4. http://econ.core.hu/file/download/Simonovits70/21_SimonovitsB.pdf (Letöltés ideje: 2017-05-18).